

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code section 206.21, the Department of Agriculture and Land Stewardship hereby amends Chapter 45, "Pesticides," Iowa Administrative Code.

These amendments require that the efficacy and safety data on a nonchemical pest control device be submitted to the Department prior to sale or lease. The Department may examine or test the devices.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8523B** on February 10, 2010.

A public hearing was held on March 2, 2010, and comments were supportive. Concern was expressed in a written comment about the potential scope of the proposed rule. A definition of "nonchemical pest control device" has been added to clarify the focus of the rule.

These amendments are intended to implement Iowa Code section 206.16.

These amendments will become effective May 26, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following new definition of "Nonchemical pest control device" in subrule **45.1(1)**:

"Nonchemical pest control device" means any instrument or contrivance, other than a firearm or trap, intended or purported to be a primary pest control device or a pest control aid for repelling insects or rodents without the use of chemicals through utilization of electromagnetic, sound, ultrasonic, subsonic, cosmic, geotechnical or other similar wave technology.

ITEM 2. Amend rule 21—45.19(206) as follows:

21—45.19(206) Enforcement.

45.19(1) Collection of samples. Samples of pesticides and devices shall be collected by an official investigator or by any employee of the state who has been duly designated by the secretary, by entry into any place during reasonable business hours.

45.19(2) Nonchemical pest control devices. Manufacturers or their representatives intending to sell or lease a nonchemical pest control device in the state shall submit efficacy and safety data to the department of agriculture and land stewardship prior to the sale or lease. This requirement may include the furnishing of specimen devices or samples. The department or the department's designee shall examine or test the device as may be necessary to ascertain the reliability, efficacy and safety data of the device and actual or potential adverse effects of the device upon human health and safety. The costs of conducting the examination or test shall be borne by the manufacturer or the manufacturer's representative.

45.19(2) 45.19(3) Notice of apparent violation. If from an examination or analysis a pesticide appears to be in noncompliance with the pesticide Act, a written stop sale, use or removal notice will be initiated by the secretary or the secretary's duly appointed authority. The notice shall state the manner in which the product fails to meet the requirements of the Act and the regulations and that the recipient shall be given an opportunity to offer such written explanation as the recipient may desire.

45.19(3) 45.19(4) Any person may obtain an opportunity to present relevant arguments or comments by submitting a written request within 20 days from the date of mailing of the notice.

45.19(4) 45.19(5) The secretary may suspend an applicator's license, permit or certification pending inquiry and, after opportunity for a hearing, may deny, suspend, revoke or modify any provision of any license, permit or certification issued under ~~this~~ the Act, upon receipt of information from the

environmental protection agency that the applicator has been convicted under the criminal provision of Section 14(b) of FIFRA or has been assessed a civil penalty under Section 14(a) of FIFRA.

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